

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No.1:20-cv-260

VICTORIA PETERSON,
Plaintiff,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS, DURHAM COUNTY BOARD
ALEJANDRA JAVIERA CABALLERO
Defendants.

)
)
) **MOTION TO DISMISS OF**
) **DEFENDANT DURHAM**
) **COUNTY BOARD OF**
) **ELECTIONS**
)
)
) Fed. R. Civ. Pro. Rule 12(b)(1)
) Fed. R. Civ. Pro. Rule 12(b)(6)

NOW COMES DEFENDANT, Durham County Board of Elections (DCBE) and respectfully moves the Court to dismiss the Plaintiffs Complaint pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure on the grounds that this Court lacks subject matter jurisdiction. Secondly, and in the alternative Defendant (DCBE) respectfully moves the Court to dismiss the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure because it fails to state a claim against Defendant (DCBE) which relief can be granted. Thirdly, pursuant to Rooker-Feldman Doctrine Plaintiff is collaterally estopped from bringing this matter in Federal Court.

In support of this Motion, and pursuant to Local Rules 7.1(a), 7.2 and 7.3(a), M.D.N.C., Defendant DCBE files contemporaneously herewith a Brief in Support of this Motion to Dismiss, which discusses the bases for the DCBE present Motion.

WHEREFORE the Defendant DCBE respectfully request that the Court dismiss all claims of the Plaintiff asserted against the Movant.

This the 24th day of August, 2020.

DURHAM COUNTY ATTORNEY'S OFFICE

By: /s/ Willie S. Darby
Senior Assistance County Attorney
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CERTIFICATE OF SERVICE

The undersign hereby certifies that, pursuant to Rule 5 of the Federal Rules of Civil Procedure and LR5.3 and LR5.4, MDNC, the foregoing pleading, motion, affidavit, notice, or other document/paper has been electronically filed with the Clerk of Court using the CM/ECF system, which system will automatically generate and send notice of Electronic Filing (NEF) to the undersigned filing user and registered users of record, and that the Court's electronic records show that each party to this action represented by at least one registered user of record, to each of whom the NEF will be transmitted, except that, with respect to the following party, a copy is being transmitted via first class mail to the address listed below:

Victoria Peterson
810 Ridgeway Avenue
Durham, North Carolina 27701

This the 24th day of August, 2020.

DURHAM COUNTY ATTORNEY'S OFFICE

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